THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 7995 of 2007

O r d e r:

Assailing the order dated 15.09.2005, passed by respondent No.1, namely the Deputy Registrar of Co-operative Societies, confirming the sale of immovable properties and directing issuance of sale certificate, as confirmed by the A.P. Co-operative Tribunal vide orders dated 06.03.2007, passed in appeal in C.T.A. No. 50 of 2005, the petitioners filed the present writ petition.

One Lingasetty Venkateswarlu, who is husband of petitioner No.1 and father of petitioner Nos. 2 to 4, after the death of his father, by making his mother, namely Lingasetty Satyavathi co-applicant had obtained a loan of Rs.1,00,000/- from respondent No. 3-Bank in the month of September, 2000 by mortgaging the house property, which the petitioners contend is a joint family property. As the loanee failed to repay the loan amount, respondent No.3 initiated action for recovery of the loan amount, which led sale of the house property in the auction conducted on 25.05.2005 in favour of one Lingaboina Venkateswarlu (impleaded respondent), for Rs.1,73,000/-. Assailing the said sale, the petitioners moved respondent No.1, who vide proceedings dated 15.09.2005 after considering the objections raised by the petitioners, rejected them and confirmed the sale and directed issuance of sale certificate. Aggrieved thereby, the petitioners preferred appeal in C.T.A. No. 50 of 2005, and the Co-operative Tribunal, vide orders dated 06.03.2007, confirmed the order of respondent No.1. Hence, the petitioners filed the present writ petition.

The learned counsel for the petitioners submitted that the house property which Lingasetty Venkateswarlu along with his mother had

mortgaged with the 3rd respondent-Bank for obtaining loan amount is a joint family property and they have 3/4th share in the same. He submits that already the petitioners have filed a suit in O.S. No. 31 of 2006 on the file of the Senior Civil Judge, Khammam, against Lingasetty Venkateswarlu and his mother, for partition, and the said Court by order dated 27.02.2006 passed in I.A. No. 182 of 2006 has granted interim injunction restraining the defendants, including the official respondent Nos. 3 and 4 from alienating the suit schedule property. He submits that the value of the mortgaged house property is worth Rs. 7,26,028/-, but the respondents have put it to sale by under-valuing it at Rs.2,86,860/-, and in fact sold the same to the highest bidder for Rs.1,71,000/- without conducting any public auction, and since there are irregularities in the conduct of the sale, the sale cannot be sustained and has to set aside. He submits that except the house property, the petitioners have no other property, and as such, immediately, upon coming to know about the sale, they moved respondent No.1, but without considering the objections raised by the petitioners, respondent No.1, vide order dated 15.09.2005, confirmed the sale and directed issuance of sale certificate, and the Co-operative Tribunal also dismissed the appeal in C.T.A. No. 50 of 2005, filed by them by order dated 06.03.2007, confirming the order passed by respondent No.1, which orders according to the petitioners, are illegal and arbitrary. He submitted that pursuant to the dismissal of the appeal, respondent No.4, namely the Divisional Co-operative Officer, pasted notice dated 11.04.2007 to the door of the petitioners, instructing them to vacate the premises. He submits that since the house property is subject matter of suit for partition, the respondents cannot be allowed to take further action in the matter, else the petitioners would be put to irreparable loss and injury.

Respondent No.2 on his behalf and on behalf of respondent Nos. 1 and 4 filed counter affidavit denying the allegations made by the petitioner. The learned Government Pleader for Co-operation representing the respondents submitted that the official respondents in the conduct of auction as well as issuance of sale certificate, which was confirmed in appeal by the Co-operative Tribunal, have followed the procedure prescribed under law, and in fact, they have issued notice to the loanee and all concerned at every stage, and that have not committed any irregularities, much less in the matter of fixation of the value of the property. He submitted that the petitioners have falsely obtained valuation certificate showing the extent of the property as 1800 feet and got the value fixed at Rs.7,26,310/-, while the extent of the property mortgaged with respondent No.3 and which was put to auction for non-payment of the loan amount is only 500 feet, whose value as on the date of sale was Rs.2,86,860/-, while at the time of taking loan was Rs.2,47,500/-, as certified by the Joint Registrar. Respondent No.1 after considering the objections taken by the petitioners, disbelieved the same and rejected the same by order dated 15.09.2005, confirmed the sale, and the same was rightly upheld by the Co-operative Tribunal in appeal in C.T.A. No. 50 of 2005, vide orders dated 06.03.3007. The present writ petition and the proceedings that preceded it before respondent No.1 and the Co-operative Tribunal, are at the instance of the loanee, which is only with a view to frustrate the realization of the amounts advanced by it to the loanee.

Respondent No.3 also filed counter. The learned Standing Counsel for respondent No.3 reiterated the counter averments, and the stand taken by him is similar to the one taken by respondent Nos. 1, 2 and 4. He contended that the petitioners filed the present writ petition at the instance of the loanee with an intention to delay the recovery of

the loan amount. The petitioners, neither before respondent No.1 nor before the Co-operative Tribunal nor before this Court, made the highest bidder in whose favour the sale was confirmed, a party-respondent. He submitted that the loanee at the time of obtaining loan submitted family members certificate, issued by the Mandal Revenue Officer, showing that he and his mother Lingasetty Satyavathi, are the legal heirs of his late father, and that they are having absolute title over the property, and considering that, they have granted the loan, and as the loanee failed to pay the loan amount, they initiated steps before respondent No.1 for sale of the mortgaged property, which culminated in the sale of the property, based on the valuation fixed by the Joint Registrar. He submitted that respondent No.1 after considering the objections taken by the petitioners rejected the same, which was confirmed in appeal by the Co-operative Tribunal, and no interference is called for therewith.

Respondent No.5, who got impleaded in the writ petition submitted that he purchased the property in question in public auction on 25.05.2005 for Rs.1,73,000/- and he having paid the entire sale consideration, the sale was confirmed by respondent No.1 vide proceedings dated 15.09.2005, and that he even got the sale deed registered in the Sub-Registrar's Office. He stated that the order of respondent No.1 was even confirmed by the Co-operative Tribunal in C.T.A. No. 15 of 2005. The petitioners having filed civil suit in O.S. No. 31 of 2006 on the file of Senior Civil Judge, Khammam, for partition, cannot assail the orders passed by the Co-operative Tribunal in C.T.A. No. 15 of 2005, which confirmed the order of respondent No.1 confirming the sale in his favour.

Heard the learned counsel for the petitioner, the learned Government Pleader for respondent Nos. 1, 2 and 4, the learned

Standing Counsel for respondent No.3 and the learned counsel for respondent No.5.

Though the petitioners raised several contentions, the limited question that arises for consideration in the writ petition is whether the respondents in the conduct of sale, which was confirmed by respondent No.1 and the Co-operative Tribunal in appeal, have committed any irregularities.

One Sri. Lingasetty Venkateshwarlu, who happens to be the husband of petitioner No.1 and father of petitioner Nos. 2 to 4, by making his mother, Lingasetty Satyavathi co-applicant, took loan of Rs. 1,00,000/- from respondent No.3-bank by mortgaging the house property in the month of September, 2000. As the loanee failed to repay the loan amount, respondent No.3 got issued notices, and the same did not yield any result, respondent No.3 moved respondent No.1, who issued notice requesting the loanee to pay the outstanding loan amount.

However, as the loanee failed to respond to the notices dated 21.07.2001, 20.08.2001, 08.12.2001 and 21.12.2001, respondent No.1 initiated steps against the loanee under Section 71(2) of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') for recovery of the loan amount. He issued notice dated 13.01.2002, and thereafter, after issuing notice to all concerned, enquiry was conducted enquiry on 19.02.2002, and as the loanee failed to turn up, he was set *ex parte*, and was again called upon to pay the outstanding amount.

As the amount was not paid, a certificate dated 19.03.2002 under Section 71 of the Act, was issued to enable recovery. In pursuance thereof, respondent No.3 filed execution petition before respondent No.1 on 23.04.2002. Respondent No.1 appointed respondent No.2 as Sale Officer on 02.05.2002 to conduct sale of the property. In execution thereof, respondent No.2 visited the property

and issued notices to the loanee as well as the guarantor on 03.06.2002, 17.06.2002, 07.08.2002 and 08.08.2002, and as there was no response, he published notification dated 13.10.1002 in Telugu news papers for sale of the property mentioning the date of auction as 26.10.2002 and the same was even fixed to the door of the loanee, but he prevented the participants from bidding. Therefore, they could not conduct auction as scheduled on that day.

However, when respondent No.2 sought to conduct auction, the petitioner's husband approached this Court and filed W.P. No. 21166 of 2002 seeking stay of sale, but the same ultimately was dismissed on 28.03.2003. Thereafter, the loanee filed insolvency petition in I.P. No. 30 of 2001 on the file of the Court of the Senior Civil Judge, Khammam, which was dismissed holding that the husband of petitioner No.1 was having the means and capacity to discharge the loan amount. After, dismissal of the I.P., respondent No.2 issued public auction notice dated 06.05.2005, which was published in Telugu newspaper (Eenadu) on 08.05.2005, fixing the date of auction as 25.05.2005, and in the said auction, one Lingaboina Venkateswarlu, was declared the highest bidder at Rs.1,73,000/-.

It is at this point of time, the petitioners filed objections before respondent No.1 contending that the house property which was put to auction, is a joint family property, and that they have 3/4th share in the said property. They further contended that the value of the property was Rs. 7,26,310/-, while it was sold at Rs.1,71,000/- by undervaluing it at Rs. 2,86,860/-, and that no wide publicity, much less notice was given with respect to the auction. Therefore, the sale shall not be confirmed.

As can be seen from the record produced by the respondents, respondent No. 1 before passing the order dated 15.09.2005, issued

notices to all concerned. Though the hearing was conducted three times on 09.08.2005, 18.08.2005 and 23.08.2005, as neither the petitioners nor their counsel appeared nor filed any material in support of their case, he having considered the material placed before him, came to the conclusion that the valuation certificate produced by the petitioners showing that the value of the property was Rs.7,26,310/- was with regard to an extent of
1800 Sq. ft., while the actual property mortgaged by the loanee was only 500 Sq. ft., whose value at the time of taking loan was Rs.2,47,500/- and at the time of putting it to auction, its value was Rs.2,86,860/-, and in fact, it is the case of the respondents that the property was auctioned at that price.

The fact that no wide publicity nor any notice was given before conducting the auction, was rejected by respondent No.1, considering the fact that apart publishing auction notice in Eenadu newspaper, as stated above, pamphlets were distributed and the notice was also affixed in the Offices of the Mandal Development Officer and the Mandal Revenue Officer, Khammam, Grama Panchayat, Khanapuram Haveli, Divisional Co-operative Officer and District Co-operative Officer, Khammam. He, thus came to the conclusion that the objections raised by the petitioners are not genuine, and as such, rejected the same, and passed the impugned order dated 15.09.2005 confirming the sale, and directed issuance of sale certificate.

Though against the said order, the petitioners preferred appeal in C.T.A. No. 50 of 2005 before the Co-operative Tribunal, the fact remains, the petitioners did not make the highest bidder a party respondent in the appeal, and though on that ground alone, the Co-operative Tribunal, thought it not to entertain the appeal, however, after considering the grounds taken by the petitioners, and having regard to the reasons assigned by respondent No.1 in his order, rejected them,

and no exception can be taken thereto.

Though the petitioners have not made the auctioneer purchaser a party-respondent to the writ petition, the fact remains, the auction purchaser has himself got impleaded as respondent No.5 in the writ petition. It is his case that he being the highest bidder in the auction, purchased the property and he having paid the entire sale consideration, the sale was confirmed in his favour by respondent No.1, which was even confirmed in appeal by the Co-operative Tribunal in C.T.A. No. 50 of 2005.

The contention of the petitioners that since they are living separately and away from the loanee, they are not aware of the loan taken by the loanee by mortgaging the title deeds, cannot be accepted, for it is the case of the respondents that the petitioners are living with the loanee and his mother. That being the case of the respondents, if not the minors, at least petitioner No.1 should be in the know of the happenings in the house, and more so when the respondents were making efforts to put the property to sale since 2002, were successfully being stalled by the loanee.

Though the petitioners claim that they being the legal heirs, have a share in the mortgaged property put to sale, it is the case of the respondents that the loanee at the time of taking loan from respondent No.3 has produced certificate issued by the Mandal Revenue Officer showing that himself and his mother are the legal heirs of his late father, and considering the same, the property was taken in mortgaged and the loan sanctioned. The husband of petitioner No.1, admittedly, having taken loan from respondent No.3, failed to pay the same, and the Insolvency Petition in I.P.

No. 30 of 2001 on the file of the Senior Civil Judge, Khammam was also dismissed holding that despite having the capacity, he is not discharging the loan amount, and in that view of the matter, the

respondent No.3 is entitled to sell the property mortgaged to them and recover its loan amount.

The petitioner No. 1 and petitioner Nos. 2 to 4, are no other than the wife and children of the loanee Lingasetty Venkiateshwarlu, and it seems that their intention is to one way or the other, drag on the proceedings, and stall the confirmation of the sale of their house in favour of the highest bidder. Inasmuch as, respondent No.1 after giving the fullest opportunity to the loanee, including the petitioners, and after following the due process of law, had passed order confirming the sale of mortgaged property in favour of respondent No.5, no exception can be taken to the order passed by the Co-operative Tribunal, confirming the same in appeal. Therefore, the contention of the petitioners that no notice was given to them by the respondent authorities before confirming the sale cannot be accepted. In that view of the matter, I find no reason whatsoever to interfere with the impugned orders.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J.

Dated: 26th December, 2007.
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